

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SLEEPING WELL, LLC, a Vermont  
limited liability corporation,

Plaintiff,

v.

ST. PAUL FIRE AND MARINE  
INSURANCE COMPANY, erroneously  
sued as The Travelers Indemnity Company,  
a New York corporation,

Defendant.


No. C 10-03658 WHA

**ORDER DENYING CROSS-  
MOTIONS FOR SUMMARY  
JUDGMENT**

The cross-motions for summary judgment are **DENIED** without prejudice to renewal after discovery. There are fact issues regarding the dates of the accused materials versus the earlier incarnations. Another issue is whether the phrase “whose unauthorized use” in the policy should be construed to mean “whose alleged unauthorized use.” Discovery into the files of the insurance company as to how this phrase has been understood and was intended (as well as the insured’s files) seems to be in order. Summary judgment motions may be refiled at the end of the discovery period.

**IT IS SO ORDERED.**

Dated: December 23, 2010.



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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE